

Maritime Administration, DOT

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Subpart A—Introduction

§ 296.1 Purpose.

This part prescribes regulations implementing the provisions of Subtitle C, Maritime Security Fleet Program, Title XXXV of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (MSA 2003), governing Maritime Security Program (MSP) payments for vessels operating in the foreign trade or mixed foreign and domestic commerce of the United States allowed under a registry endorsement issued under 46 U.S.C. 12105. The MSA 2003 provides for joint responsibility between the Department of Defense (DOD) and the Department of Transportation (DOT) for administering the law. These regulations provide the framework for the coordination between DOD and DOT in implementing the MSA 2003. Implementation of the MSA 2003 has been delegated by the Secretary of Transportation to the Maritime Administrator, U.S. Maritime Administration and by the Secretary of Defense to the Commander, U.S. Transportation Command, respectively.

§ 296.2 Definitions.

For the purposes of this part:

Act means the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1101 *et seq.*).

Administrator means the Maritime Administrator, U.S. Maritime Administration (MARAD), U.S. DOT, who is authorized by the Secretary of Transportation to administer the MSA 2003, in consultation with the Commander, U.S. Transportation Command (USTRANSCOM).

Agreement Vessel means a vessel covered by an MSP Operating Agreement.

Applicant means an applicant for an MSP Operating Agreement.

Bulk Cargo means cargo that is loaded and carried in bulk without mark or count.

Chapter 121 means the vessel documentation provisions of chapter 121 of title 46, United States Code.

Citizen of the United States means an individual who is a United States citizen, or a corporation, partnership or association as determined under section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802).

Commander means Commander, USTRANSCOM, who is authorized by the Secretary of Defense to administer the MSA 2003, in consultation with the Administrator.

Contracting Officer means the Associate Administrator for National Security, MARAD.

Contractor means the owner or operator of a vessel that enters into an MSP Operating Agreement for the vessel with the Secretary of Transportation (acting through MARAD) pursuant to section 53103 of the MSA 2003.

Documentation Citizen means an entity able to document a vessel under 46 U.S.C. chapter 121. This definition includes a trust.

DOD means the U.S. Department of Defense.

Domestic Trade means trade between two or more ports and/or points in the United States.

Eligible Vessel means a vessel that meets the requirements of section 53102(b) of the MSA 2003.

Emergency Preparedness Agreement (EPA) means the agreement, required by section 53107 of the MSA 2003, between a Contractor and the Secretary of Transportation (acting through MARAD) to make certain commercial

transportation resources available during time of war or national emergency or whenever determined by the Secretary of Defense to be necessary for national security or contingency operation.

Enrollment means the entry into an MSP Operating Agreement with MARAD to operate a vessel(s) in the MSP Fleet in accordance with § 296.30.

Fiscal Year means any annual period beginning on October 1 and ending on September 30.

Fleet means the Maritime Security Program Fleet established under section 53102(a) of the MSA 2003.

Foreign Commerce means:

(1) For any vessel other than a liquid or a dry bulk carrier, a cargo freight service, including direct and relay service, operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement under section 12105 of title 46, United States Code, where the origination point or the destination point of cargo carried is the United States, regardless of whether the vessel provides direct service between the United States and a foreign country, or commerce or trade between foreign countries; and

(2) For liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit United States-documented vessels to freely compete with foreign-flag bulk carrying vessels in their operation or in competing for charters.

LASH Vessel means a lighter aboard ship vessel.

Militarily Useful is defined, in terms of minimum military capabilities, according to DOD Joint Strategic Planning Capabilities Plan (JSCAP) guidance.

MSP Fleet means the fleet of vessels operating under MSP Operating Agreements.

MSP Operating Agreement means the agreement between a Contractor and MARAD that provides for MSP payments.

MSP Payments means the payments made for the operation of U.S.-flag vessels in the foreign commerce.

Noncontiguous Domestic Trade means transportation of cargo between a point in the contiguous 48 states and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

Operating Day means any calendar day during which a vessel is operated in accordance with the terms and conditions of the MSP Operating Agreement.

Operator is a person that either owns a vessel or charters in a vessel at a financial risk through a demise charter that transfers virtually all the rights and obligations of the vessel owner to the vessel operator, such as that of crewing, supplying, maintaining, insuring and navigating the vessel.

Owner means an entity that has title and/or beneficial ownership of a vessel. Only an owner that is a person is eligible to enter into an MSP Operating Agreement.

Participating Fleet Vessel means any vessel that:

(1) On October 1, 2005—

(i) Meets the citizenship requirements of paragraph (1), (2), (3), or (4) of section 53102(c) of the MSA 2003;

(ii) Is less than 25 years of age, or is less than 30 years of age in the case of a LASH vessel; and

(2) On December 31, 2004, is covered by an MSP Operating Agreement.

Person includes corporations, limited liability companies, partnerships, and associations existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country. A trust is not a person.

Roll-on/Roll-off Vessel means a vessel that has ramps allowing cargo to be loaded and discharged by means of wheeled vehicles so that cranes are not required.

SecDef means Secretary of Defense acting through the Commander USTRANSCOM.

Secretary means the Secretary of Transportation acting through the Maritime Administrator.

Section 2 Citizen means a United States citizen within the meaning of section 2 of the Shipping Act, 1916, 46 U.S.C. 802, without regard to any statute that “deems” a vessel to be owned and operated by a Section 2 citizen.

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Tank Vessel means, as stated in 46 U.S.C. 2101(38), a self-propelled tank vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue. In addition, the vessel must be double hulled and capable of carrying simultaneously more than two separated grades of refined petroleum products.

Transfer of an MSP Operating Agreement includes any sale, assignment or transfer of the MSP Operating Agreement, either directly or indirectly, or through any sale, reorganization, merger, or consolidation of the MSP Contractor.

United States includes the 50 U.S. states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

United States Citizen Trust means:

(1) Subject to paragraph (3), a trust that is qualified under this definition.

(2) A trust is qualified only if:

(i) Each of the trustees is a citizen of the United States under section 2 of the Shipping Act, 1916, as amended; and

(ii) The application for documentation of the vessel under 46 U.S.C. chapter 121, includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(3) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust instrument provides that persons who are not citizens of the United States

may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(4) This definition shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

United States Documented Vessel means a vessel documented under 46 U.S.C. chapter 121.

§ 296.3 Applications.

(a) *Action by MARAD—Time deadlines.* Applications for enrollment of vessels in the MSP are due by October 15, 2004 to the Secretary, Maritime Administration, Room 7218, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. If, for any reason, after the award of an Operating Agreement, the Contractor is unwilling or unable to enter into an MSP Operating Agreement, MARAD may award that contract to an Applicant having an eligible vessel that applied but was not awarded an MSP Operating Agreement. MARAD may also open a new round of applications at a later date. Any applications received before October 15, 2004 shall be deemed to have been submitted on October 15, 2004. Within 90 days after receipt of a completed application, the Secretary shall approve the application, in conjunction with the SecDef, or provide in writing the reason for denial of that application. Execution of a standard MSP Operating Agreement shall take place reasonably soon after approval of the application.

(b) *Action by the applicant.* Each applicant for an MSP Operating Agreement shall submit an application under OMB control number 2133-0525 to the Secretary, Maritime Administration in the manner prescribed on that form. Applicants may request an application form from MARAD's Office of Sealift Support, or the application form can be downloaded from the MARAD Web site, www.marad.dot.gov, and completed using Microsoft Word. Completed forms must be received by MARAD no later than close of business (5 p.m. Eastern Time) on October 15, 2004, and may be submitted in person, by U.S. mail, Federal Express, United Parcel Service, or